

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

No. 18-CV-01119-RB-LF

**AFSCME COUNCIL 18; MICHELLE LUJAN
GRISHAM, in her official capacity as
Governor of New Mexico; and HECTOR
BALDERAS, in his official capacity as Attorney
General of New Mexico,**

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF UNION
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7.8, Defendant AFSCME Council 18 advises the Court of the recent decision granting summary judgment to the union and government defendants in *Thompson v. Marietta Education Association*, 2019 WL 6336825 (S.D. Ohio Nov. 26, 2019) (attached as Ex. A).

This decision is relevant to the motions pending before this Court because the court held that the plaintiff's challenge to Ohio's exclusive representation collective bargaining law was foreclosed by *Minnesota State Board for Community Colleges v. Knight*, 461 U.S. 271 (1984). *Thompson*, 2019 WL 6336825, at *3, *6. Like Plaintiff Hendrickson here, the plaintiff in

Thompson claimed that the recognition of the union as the democratically elected exclusive representative for a bargaining unit for public employees unconstitutionally compelled her speech and association. The court found that “Plaintiff’s contention that the Union speaks for her is inaccurate … realistically it is speaking for the bargaining unit members as a collective rather than purporting to espouse specific views for any individual bargaining unit member.” *Id.* at 1. Additionally, here, as in *Thompson*, “as a factual matter, Plaintiff has not offered evidence that any one perceives the Union’s speech as attributable to her as an individual.” *Id.* Defendants make these same arguments. *See* Dkt. 32, at 20-25; Dkt. 39, at 19-21; Dkt. 45, at 10-12.

The court in *Thompson* also summarizes the numerous district and circuit court decisions to date rejecting identical challenges to exclusive representation collective bargaining, including two separate denials of certiorari by the Supreme Court. *Thompson*, 2019 WL 6336825, at *7 (“[I]t appears that every court to have considered the issue has found that *Knight* precludes claims that exclusive representation in the public sector, alone, amounts to unconstitutional compelled speech or compelled association.”).

Lastly, the order is relevant because it determines that, even if the plaintiff’s challenge to exclusive representation collective bargaining was not foreclosed, then alternatively Ohio’s system “would survive even strict scrutiny” because it is narrowly tailored to serve a compelling state interest. *Id.* at *8. Defendants make the same arguments, with factual support, here. Dkt. 32 at 25-27.

Dated: December 2, 2019

Respectfully submitted,

/s/ Eileen B. Goldsmith

Scott Kronland (*pro hac vice*)
skronland@altshulerberzon.com
Eileen B. Goldsmith (*pro hac vice*)
egoldsmith@altshulerberzon.com
Stefanie L. Wilson (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street Suite 300
San Francisco, CA 94108
(415) 421-7151

Shane C. Youtz
shane@youtzvaldez.com
Stephen Curtice
stephen@youtzvaldez.com
James A. Montalbano
james@youtzvaldez.com
YOUTZ & VALDEZ, P.C.
900 Gold Avenue S.W.
Albuquerque, NM 87102
(505) 244-1200

Attorneys for Defendant AFSCME Council 18

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the CM/ECF system this 2nd day of December, 2019, on all registered parties.

Brian K. Kelsey
Reilly Stephens
Liberty Justice Center
190 South LaSalle Street, Suite 1500
Chicago, Illinois 60603
bkelsey@libertyjusticecenter.org
rstephens@libertyjusticecenter.org

Patrick J. Rogers
Patrick J. Rogers, LLC
20 First Plaza, Suite 725
Albuquerque, NM 87102
patrogers@patrogerslaw.com

Attorneys for Plaintiff Brett Hendrickson

Lawrence M. Marcus
Alfred A. Park
Park & Associates, LLC
3840 Masthead Street, N.E.
Albuquerque, NM 87109
lmarcus@parklawnm.com
apark@parklawnm.com

Attorneys for Defendants Michelle Lujan Grisham and Hector Balderas

/s/ Eileen B. Goldsmith
Eileen B. Goldsmith